Mr. Justice DOUGLAS, concurring in part and dissenting in part.

I join in the Court's opinion and judgment as to the individual and corporate respondents. I would go further, however, and also hold that the United States has waived its sovereign immunity to petitioners' claims.

Petitioners are an unincorporated association of mixed-blood Utes and individuals of that group. They sought damages, in the District Court, for fraudulent securities transactions, for negligence by agents of the Federal Government, and for the deprivation of statutory rights granted them by Congress. The District Court awarded damages on the first two claims, but dismissed the third for want of jurisdiction and for failure to state a claim. The Court of Appeals reversed the two damage awards and affirmed the dismissal of the third action. 431 F.2d 1337, 1349 (CA10 1970).

In the Ute Indian Supervision Termination Act of 1954, Congress sought

> 'to provide for the partition and distribution of the assets of the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah between the mixed- blood and full-blood members thereof; for the termination of Federal supervision over the trust, and restricted property, of the mixed-blood members of said tribe; and for a development program for the full-blood members thereof, to assist them in preparing for termination of Federal supervision over their property.' 25 U.S.C. §677.

***158** That the various property interests in the reservation were to be treated differently is evidenced by the Committee Reports accompanying this legislation:

> 'An essential provision of the proposed legislation is the division between the two groups, on the basis of their relative numbers, of all tribal assets, except oil, gas, and mineral rights, and unadjudicated claims against the United States. These undivided assets will continue to be owned and administered jointly by the two groups. The responsibility for making this division is on the Indians themselves, but if they fail to agree within 12 months after the rolls are completed, the Secretary of the Interior is authorized to make the division.' S.Rep.No.1632, 83d Cong., 2d Sess., 6 (1954) (emphasis added).

Accord, H.R.Rep.No.2493, 83d Cong., 2d Sess. (1954).

Involved here is the mineral estate in the Reservation lands. Because these 'gas, oil, and mineral rights' were 'not susceptible of equitable and practicable distribution' among the individual Indians, they were to be 'managed jointly by the Tribal Business Committee (of the full-blood Utes) and the authorized representatives of the mixed-blood group.' 25 U.S.C. §677i. The benefits were to be shared proportionately according to the relative numbers of each group on their final membership rolls. Ibid.

Congress set forth an explicit procedure for the selection of the 'authorized representatives' of the mixed-blood Utes who, with the Tribal Business Committee, were to have managerial powers over the mineral estate in the reservation. Central to this selection was the requirement for 'a majority vote of the adult mixed-blood members of the tribe at a special election authorized and called by the Secretary' of the Interior. 25 U.S.C. §677e. The petitioner Affiliated Ute Citizens was created under this procedure on April 4, 1956. Two ***159** years later, the Ute Distribution Corp. was formed and there lies the root of the

present litigation.

The Ute Distribution Corp. was not chartered according to the guidelines mandated by Congress. Rather than following the requirement for a majority vote of the mixed-blood members, it was created by the five board members of Affiliated Ute. Approval of its articles of incorporation was by a vote of only 42 to 5– far short of the majority of the 490 mixed-blood Utes required by 25 U.S.C. §677e. After incorporation, 10 shares of stock were issued to each of the mixed-blood Utes. Despite the flaws in Ute Distribution Corp.'s formation, the Bureau of Indian Affairs treated it, and not Affiliated Ute Citizens, as the 'authorized representative.' Payments for mineral rights were thus made to Ute Distribution which, in turn, passed them on to its shareholders as dividends.

Because the Bureau of Indian Affairs viewed the transfer of mineral interests to Ute Distribution as one to the authorized representative, cf. 25 U.S.C. §677o(a), the restrictions on the transfer of individual property were removed and the federal trust relationship purportedly was terminated. 25 U.S.C. §677v; 26 Fed.Reg. 8042. It was upon this basis that the courts below held that the individual mixed-blood Utes and the Affiliated Utes no longer had cognizable interests in the mineral estate of the reservation.

Even if the federal trust relationship was terminated as to individual property interests, it does not follow that the trust relationship was also terminated as to the group interest in the mineral rights. The United States continued to owe significant obligations and duties with regard to these mineral interests. See 25 U.S.C. §§677i, 677n, and 677o. See Berger, Indian Mineral Interest – A Potential for Economic Advancement, 10 Ariz.L.Rev. 675 (1968). It was to obtain the enjoyment of the ***160** statutory benefits and to redress their injury that petitioners brought this action against the United States.

The waiver of sovereign immunity for claims relating to land allotments first appeared in an amendment to the Indian Appropriations Act of 1894, 28 Stat. 305, as amended, 25 U.S.C. §345:

> 'All persons who are in whole or in part of Indian blood or descent who are entitled to an allotment of land under any law of Congress . . . or who claim to have been unlawfully denied or excluded from any allotment or any parcel of land to which they claim to be lawfully entitled by virtue of any Act of Congress, may commence and prosecute or defend any action, suit, or proceeding in relation to their right thereto in the proper district court of the United States . . ..'

By a further amendment in 1901, Congress made explicit what had previously been only implicit: that it intended to allow allotment claimants to bring actions against 'the United States as party defendant.' Act of Feb. 6, 1901, §1, 31 Stat. 760. See H.R.Rep.No.1714, 56th Cong., 1st Sess. (1900); S.Rep.No.2040, 56th Cong., 2d Sess. (1901).

Affiliated Ute Citizens argued that their asserted right to a portion of the mineral estate of the reservation was an 'allotment or . . . parcel of land' which they had been unlawfully denied and that they were therefore able to bring this action against the United States under §345. See, e.g., *United States v. Pierce*, 235 F.2d 885 (CA9 1956); *Gerard v. United States*, 167 F.2d 951 (CA9 1948). The courts below rejected this view, with the Court of Appeals saying:

> 'This section of the statute is obviously intended to provide relief to the Indians entitled to possession of allotments and similar interests. The cases and ***161** statutory law have ascribed to the word 'allotment' a well recognized meaning. The nature of the interest sought to be protected and secured does not resemble that described in the statute.' 431

F.2d, at 1350.

We owe to the Indians a beneficent interpretation of remedial legislation designed to right past wrongs. *United States v. Kagama*, 118 U.S. 375, 384– 385, 6 S.Ct. 1109, 1114, 30 L.Ed. 228. The Court of Appeals, however, gave only a limited interpretation to this waiver of sovereign immunity against Indians' claims. The Solicitor General likewise argues for a limited application of this waiver and would apply it only to claims concerning 'a tract of land set aside out of a common holding and awarded to an individual allottee.' [FN1]

> 'But in the Government's dealings with the Indians the rule is exactly the contrary. The construction, instead of being strict, is liberal; doubtful expressions, instead of being resolved in favor of the United States, are to be resolved in favor of a weak and defenseless people, who are wards of the nation, and dependent wholly upon its protection and good faith. This rule of construction has been recognized, without exception, for more than a hundred years. . . .' *Choate v. Trapp*, 224 U.S. 665, 675, 32 S.Ct. 565, 569, 56 L.Ed. 941.

See also *Alaska Pacific Fisheries v. United States*, 248 U.S. 78, 79, 39 S.Ct. 40, 63 L.Ed. 138 (1958).

***162** The waiver of sovereign immunity should not be so limited as the Solicitor General and the courts below suggest. The 1894 Act, now codified in 25 U.S.C. §345, was plainly intended to give Indians a means of enforcing their rights to governmental grants of interests in realty. [FN2] To be sure, the section was enacted in an era during which these grants usually took the form of individual possessory interests in realty, Gilbert & Taylor, Indian Land Questions, 8 Ariz.L.Rev. 102, 112 (1966); but that should not prevent this remedial section from applying to new forms of interests in mineral rights or to other forms of property. [FN3]

Nor does the plain language of §345 suggest a contrary result. It speaks of an 'allotment or any parcel of land.' [FN4] Certainly the modern, conventional way of allotting mineral rights is through fractional interests created by contracts or through stock interests in corporations to which those allotments are transferred. If ***163** Congress has waived sovereign immunity for claims relating to fee interests in realty, it surely could not have intended that formal requirements of the art of conveyancy destroy that waiver of immunity for lesser interests in realty. Particularly is that so where, as here, the lesser interest seems to have been granted through an error by the Bureau of Indian Affairs.

The limited retention of sovereign immunity in the Ute termination act further supports petitioners' claims. Title 25 U.S.C. §677i provides that the 'partition (of tribal assets) shall give rise to no cause of action against the United States.' The Committee Reports and the statute itself indicate that the mineral interests were not to be the subject of partition as the word is used in that Act. S.Rep.No.1632, 83d Cong., 2d Sess., 6 (1954); H.R.Rep.No.2493, 83d Cong., 2d Sess. (1954); 25 U.S.C. §677i. Thus, the failure of Congress to extend sovereign immunity to the unpartitioned mineral interests here in issue strongly suggests that immunity has been waived as to these claims. Moreover, the only other immunity provision of the Act, 25 U.S.C. §677h, applies only where there has been consent by the authorized representatives of the mixed- blood group which was necessarily absent because of the defect in the creation of the Ute Distribution Corp.

IMPORTANT

FOOTNOTES OF MR. JUSTICE DOUGLAS:

FN1. A similar argument was made in *United States v. Pierce*, 235 F.2d 885, 888 (CA9 1956):

> 'The United States contends that the jurisdictional prerequisite for any action under (s 345) . . . is the existence of a specific allotment selection which has been unlawfully denied by the Secretary of the Interior . . ..' The court rejected this argument saying that it was 'based upon an unreasonable limitation as to the purpose of the statute,' ibid., and went on to sustain the Indians' claims to income from the land.

FN2. *First Moon v. White Tail*, 270 U.S. 243, 46 S.Ct. 246, 70 L.Ed. 565, relied upon by the Solicitor General, is not to the contrary because it dealt with the transfer of property occasioned by an Indian's death. Such transfers were removed from the scope of §345 and 'entrusted to the exclusive cognizance of the Secretary of the Interior by the Act of June 25, 1910, c. 431, 36 Stat. 855 . . .' 270 U.S., at 244, 46 S.Ct., at 246.

FN3. In *Scholder v. United States*, 428 F.2d 1123, 1129 (CA9 1970), for example, the court noted 'that section (345) is not limited to actions seeking to compel the issuance of an allotment in the first instance. It serves also to protect 'the interests and rights of the Indian in his allotment or patent after he has acquired it." The court then held that challenges to liens placed upon Indian lands fell within the jurisdictional scope of §345. Certainly the divestiture of interests in lands, alleged here, should not be entitled to a lesser degree of protection than the imposition of a lien.

FN4. Section 345 also requires that the property interest be one derived 'under any law of Congress' or 'by virtue of any Act of Congress.' E.g., *Naganab v. Hitchcock*, 202 U.S. 473, 26 S.Ct. 667, 50 L.Ed. 1113; *Oregon v. Hitchcock*, 202 U.S. 60, 26 S.Ct. 568, 50 L.Ed. 935. In the present case, the rights asserted are those derived from the Ute Indian Supervision Termination Act of 1954.